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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re ANDREW W., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. ANDREW W., Defendant and Appellant.	A154501 (Humboldt County Super. Ct. No. JV160287)

After engaging in a 2016 fight that left one of its participants with severe damage to a lower limb, appellant Andrew W. (Andrew) was made a ward of the court under Welfare and Institutions Code section 602.[1] The juvenile court later placed Andrew with his father, but Andrew absconded from his father's care numerous times, violating the terms of his probation. After several referrals from the juvenile probation department relating to Andrew's absconding, the juvenile court at a May 31, 2018 dispositional hearing placed Andrew in the New Horizons program at a locked regional facility.

Andrew appeals, arguing that the juvenile court abused its discretion by placing him in New Horizons without sufficient evidence to support the commitment. We disagree. However, the People concede that Andrew is entitled to 15 additional days of predisposition custody credit; we therefore remand on that basis, but otherwise affirm.

[1]All subsequent statutory references are to the Welfare and Institutions Code unless otherwise noted.

BACKGROUND

In December 2016, the Humboldt County District Attorney filed a petition pursuant to section 602, subdivision (a) alleging that Andrew committed one count of felony battery inflicting serious bodily injury (Pen. Code, § 243, subd. (d)) and one count of misdemeanor battery (Pen. Code, § 242). After Andrew admitted both charges, he was declared a ward of the court and placed in the home of his father.

In the fall of 2017, the probation department alleged under section 777 that Andrew violated the terms of his probation by absconding from his father's care, failing to adhere to curfew, and failing to attend school. In January 2018, and again in March 2018, the probation department filed identical referrals for new instances of the same conduct. Each time, Andrew admitted the allegations.

In anticipation of the dispositional hearing concerning the March 2018 referral, the juvenile probation officer prepared a report. That report details Andrew's special needs, catalogues his delinquent conduct, and notes his desire to live with Meryl Ann Crowell, the grandmother of one of Andrew's friends. Andrew's father is reported to oppose any placement with Ms. Crowell. Finally, the report recommends that Andrew complete the New Horizons program in a regional locked facility and discusses a number of services available at New Horizons.

At the dispositional hearing, the juvenile court noted that it had "read and considered" the juvenile probation officer's report but heard no testimony. The juvenile court committed Andrew to New Horizons for up to six months, with a maximum confinement period of three years, nine months, and four days as of May 16, 2018. This appeal followed.

DISCUSSION

Andrew argues that the juvenile court was required to find (1) that his commitment to New Horizons would likely benefit him and (2) that less restrictive alternatives were ineffective or inappropriate. Andrew further argues that the record is insufficient to support either finding. We disagree with both contentions. The record

contains evidence sufficient to establish (1) that the New Horizons commitment would probably benefit Andrew and (2) that the juvenile court both considered Andrew's proposed less restrictive alternative placement with Ms. Crowell and acted reasonably in rejecting it.

I. The Record Is Sufficient to Justify the Commitment.

Andrew argues that the juvenile court erred in committing him to New Horizons. Placement decisions are reviewed for abuse of discretion. (*In re Nicole H.* (2016) 244 Cal.App.4th 1150, 1154.) " ' "A trial court abuses its discretion when the factual findings critical to its decision find no support in the evidence." ' " (*Ibid.*)

A. Sufficient Evidence Supports the Juvenile Court's Determination That the Placement Would Likely Benefit Andrew.

Relying on *In re Carlos J.* (2018) 22 Cal.App.5th 1 (*Carlos J.*), Andrew argues that the juvenile court abused its discretion by placing him at New Horizons without sufficient evidence that such a placement would likely benefit him. We disagree.

In *Carlos J.*, the court reversed the commitment of a minor delinquent because the record was insufficient to support that placement. (*Carlos J.*, *supra*, 22 Cal.App.5th at p. 15.) Although the juvenile defendant in *Carlos J.* faced commitment to the state Department of Juvenile Facilities[2] (DJF) rather than a locked regional facility like New Horizons, the *Carlos J.* court noted that "[e]vidence of probable benefit is required not only by section 734 [governing DJF placements], *but also by the language of section 202*, subdivision (b)," which applies to any placement of a delinquent minor. (*Id.* at p. 6, italics added.)

[2] "Effective July 1, 2005, the correctional agency formerly known as the California Youth Authority (CYA) became known as the Division of Juvenile Facilities (DJF). DJF is part of the Division of Juvenile Justice [(DJJ)]." (*In re D.J.* (2010) 185 Cal.App.4th 278, 280, fn. 1, citing Welf. & Inst. Code, § 1710, subd. (a); Pen. Code, § 6001; Gov. Code, §§ 12838, subd. (a), 12838.3, 12838.5, 12838.13.) The terms DJJ and DJF are thus essentially interchangeable, and we use those terms in a manner consistent with their use in the prior case law. (*In re J.C.* (2017) 13 Cal.App.5th 1201, 1204 fn. 2.)

Moreover, the *Carlos J.* court required "specific evidence in the record of the programs at the DJF expected to benefit a minor." (*Carlos J.*, *supra*, 22 Cal.App.5th at p. 10.) In doing so, the court invoked not only section 734, pertaining to DJF commitments, but two other authorities applicable to all placements of delinquent minors: (1) section 202, subdivision (b), requiring "the determination of 'appropriate' treatment in a minor's 'best interest' " and (2) California Rules of Court, rule 5.790(h), requiring "the determination of whether the [setting] is 'best suited' to meet a minor's 'special needs and best interest.' " (*Ibid*.)

Here, although section 734 is inapplicable, there is no question as to whether section 202, subdivision (b) and California Rules of Court, rule 5.790(h) apply; they do. And like the juvenile defendant in *Carlos J.*, who had been diagnosed with post-traumatic stress disorder, Andrew faces multiple mental, psychological, and cognitive challenges, among them Attention Deficit Hyperactivity Disorder (ADHD), Emotional Disturbance, and "discrepancy with visual processing and attention issues."[3] In short, and notwithstanding the fact that Andrew was placed in a non-DJF facility, this case falls squarely within the scope of the rule in *Carlos J*. requiring "*some* specific evidence in the record of the programs . . . expected to benefit a minor." (*Carlos J.*, *supra*, 22 Cal.App.5th at p. 10.)

Thus, the question in this case is whether there is such specific evidence in the record. "Where a minor has particular needs," specific evidence will "include *brief* descriptions of the relevant programs to address those needs." (*Carlos J.*, *supra*, 22 Cal.App.5th at p. 12.)

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[3] *In re A.R.* (2018) 24 Cal.App.5th 1076, cited by the People, does little to distinguish the instant case from *Carlos J*. Although the court in *A.R.* declined to apply the "specific evidence" standard from *Carlos J*. to a juvenile defendant who "had a long history with the juvenile system and [for whom] the juvenile court had already tried various less restrictive placements," *A.R.* makes no mention of any special needs on the part of that juvenile defendant. (*A.R.*, at p. 1081.) Here, as in *Carlos J.*, the requirement for specific evidence arises precisely from Andrew's particular needs.

Here, the juvenile court averred that it had "read and considered" the report prepared by the juvenile probation officer. That report recommends that Andrew "participate in and complete the New Horizons program for the provision of intensive [m]ental [h]ealth, [a]lcohol, and [o]ther [d]rug treatment as needed for said minor's individualized assessment, treatment planning, behavioral, and mental health stabilization pending final placement." The probation officer's report also describes certain May 10, 2018, deliberations of the Humboldt County Probation Department Staffing Committee, which "determined [Andrew] need[ed] services to assist with aggression, impulsivity, and family counseling," noting that "the New Horizons program would best serve his needs" by addressing the "absconding behaviors[, which] have prevented him from accessing services in the community."

Finally, the report discusses Andrew's top criminogenic risk factors and describes how each one would be treated at New Horizons. Andrew's "lack of pro-social leisure and recreation activities" would be addressed by "a [c]ase [m]anager who could help him explore [such] activities." His "anti-social behavior" could be improved by "[i]ndividual counseling sessions with a therapist," focused on "intensive skill-building to learn more successful techniques in his decision-making and emotional self-reliance." Andrew's third criminogenic risk factor, his difficult family life, could benefit from "[f]amily therapy sessions" concerning "boundaries, following rules, and . . . proper communication."

The record here is thus more substantial than the record in *Carlos J.* In that case, the probation report referred vaguely to "routine medical, dental, and mental health treatment," and unspecified "gang intervention services." (*Carlos J.*, *supra*, 22 Cal.App.5th at p. 11.) In contrast, the probation report in this case made several specific recommendations indexed to Andrew's assessed needs. Those recommendations are sufficient to satisfy the requirement in *Carlos J.* for "brief descriptions of . . . relevant programs" to address a minor's needs. (*Id.* at p. 12.) In sum, under the standard adopted in *Carlos J.*, the record furnishes sufficient "specific evidence" supporting the juvenile

court's finding that Andrew would likely benefit from placement at New Horizons.[4] (*Ibid.*)

B. There Was Substantial Evidence to Support the Juvenile Court's Implied Rejection of Less Restrictive Alternative Placements.

We also reject Andrew's argument that the juvenile court failed to consider less restrictive alternatives—i.e., his proposed placement with Ms. Crowell. Assuming that the juvenile court was required to consider less restrictive alternatives, we find the record sufficient to show that the juvenile court considered and reasonably rejected such alternatives.

In *In re Nicole H.* (2016) 244 Cal.App.4th 1150 (*Nicole H.*), a delinquent minor was placed in a group home approximately 340 miles away from her father's home. (*Id.* at p. 1153.) Division Five of this District reversed that dispositional order in an opinion that relied on "[c]ase law addressing the placement of juveniles at the Division of Juvenile Justice," quoting language from earlier decisions requiring sufficient evidence that less restrictive alternatives were considered: "Nevertheless, there is no rule that such a placement cannot be ordered unless less restrictive placements have been attempted, and there is no requirement that the juvenile court expressly state on the record the reasons for rejecting less restrictive placements. [Citations.] Rather, 'if there is evidence in the record to show a consideration of less restrictive placements was before the court, the fact the judge does not state on the record his consideration of those alternatives and reasons for rejecting them will not result in a reversal.' [Citation.] On the other hand, 'there must be some evidence to support the judge's implied determination that he sub silentio considered and rejected reasonable alternative dispositions.' " (*Id.* at p. 1159.)

After observing that "there [was] some basis to conclude" that the juvenile court judge "considered the . . . placement" that was ultimately challenged on appeal, the

[4] In reaching the conclusion that the record here is sufficient, we do not imply that it is exemplary. In particular, a brief discussion of how New Horizons could be expected to address Andrew's ADHD might have been appropriate and helpful. On the facts here, however, this specific lacuna does not establish an abuse of discretion.

Nicole H. court held that "any implied finding that the placement was in appellant's *best interests* is not supported by substantial evidence in the record." (*Nicole H., supra,* 244 Cal.App.4th at p. 1159, italics added.) Thus, while *Nicole H.* stops short of requiring juvenile courts to explicitly state that they considered less restrictive alternatives in making placements outside the DJJ, it does find that requirement "instructive" with respect to determining whether non-DJJ placements should be upheld.

Here, even assuming consideration of less restrictive alternatives was required, the juvenile court met that requirement. After a discussion of Andrew's absconding behaviors and criminogenic risk factors, the probation officer's report notes that "Andrew desires to live with Meryl Ann [Crowell]," but opines that "the structure and supervision level that could be offered by Ms. [Crowell] is not sufficient." Given that the juvenile court "read and considered" the report, there is ample reason to believe that a placement with Ms. Crowell was considered.

Even so, where the consideration of less restrictive alternatives is required, there must be "evidence supporting a determination that less restrictive alternatives are ineffective or inappropriate." (*In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576.) Here, Andrew's self-admitted absconding behavior is described in the probation officer's report: "Andrew continues to violate probation by absconding from his home and not attending school." It stands to reason that placement in Ms. Crowell's private residence would be less effective in stopping Andrew's absconding behavior than placement in a locked facility. Furthermore, the same report records Andrew's father's opposition to placement with Ms. Crowell, on the grounds that "she never attempted to call him while [Andrew] was in her care, especially when he was intoxicated." Given that one of the primary purposes of juvenile court law is to "strengthen the minor's family ties whenever possible," the opinion of Andrew's father is hardly irrelevant to the placement decision. (*Nicole H., supra,* 244 Cal.App.4th at p. 1154.) Moreover, Andrew's apparent intoxication while under Ms. Crowell's care supports the inference that she would be a less suitable placement than a locked facility with alcohol and drug treatment programs. Because there is some evidentiary support for the juvenile court's implied rejection of a

less restrictive placement with Ms. Crowell, there was no abuse of discretion on this basis.[5]

II. Andrew Is Entitled to 15 Additional Days of Predisposition Custody Credit.

As of May 16, 2018, Andrew was entitled to 151 days of predisposition custody credit. However, his contested disposition hearing was 15 days later, on May 31, 2018. Andrew argues that those 15 days of time served entitle him to 15 additional days of predisposition custody credit. The People concede Andrew's entitlement to these additional credits, and we agree.

DISPOSITION

The case is remanded to the juvenile court with instructions to amend its dispositional order to reflect that Andrew is entitled to 15 additional days of predisposition custody credit. The order is otherwise affirmed.

[5] Andrew also cites section 727.1, subdivision (a) to argue that the juvenile court was required "to consider the least restrictive, most 'family like' setting in order to meet the minor's needs and best interests and achieve the goal of rehabilitation." As the People correctly point out, however, the criteria set forth in section 727.1, subdivision (a) pertain to " 'foster care placement[s].' " (§ 727.1, subd. (a).) Andrew was not placed in foster care, so section 727.1 is inapplicable here. Andrew's reliance on *Nicole H.* to support this argument is likewise unavailing, as the court there expressly noted that "[t]he group home placement at issue in the present case is a foster care placement." (*Nicole H., supra*, 244 Cal.App.4th at p. 1156, fn. 5.) Andrew's citation to *In re Khalid B.* (2015) 233 Cal.App.4th 1285 fares no better; that case applies section 727.1, subdivision (b)(1), which governs out-of-state commitments. Andrew's placement was in California, so neither section 727.1, subdivision (b)(1) nor *Khalid B.*, applies.

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BROWN, J.

WE CONCUR:

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POLLAK, P. J.

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STREETER, J.

In re Andrew W. (A154501)